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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/575,841 | 05/29/2008 | Robert Nicholas Sofoulis | 28594/41992 | 5263 |
| 4743 | 7590 | 07/09/2009 | EXAMINER | |
| MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357 | | | KELLEY, STEVEN SHAUN | |
| ART UNIT | PAPER NUMBER | | | |
| 2617 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 07/09/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/575,841 | Applicant(s) SOFOULIS, ROBERT NICHOLAS |
| | Examiner STEVEN KELLEY | Art Unit 2617 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on **5-29-08**.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4 and 38-40 is/are rejected.
 7) Claim(s) 5-37 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application Paper No(s)/Mail Date _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2-7-07</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. Claims 5-37 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, claims 5-37 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope/form of claim 40 is indefinite/improper as it recites "A shroud as substantially herein described with reference to the drawings".

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 7,099,010 to Faillance (hereinafter "Faillance").

Regarding claim 1, Faillance teaches a shroud (telephone case 10) for protecting a communication device (telephone 70), the shroud comprises a receptacle (housing 20) having an opening to receive the device ("open portion of housing 20", see column 4 lines 12-14), the receptacle being adapted to releasably retain the device therein, the shroud is movable between a closed condition and an open condition (see Figs. 4-5 for open position and Figs. 1 and 6 for the closed position, where cover panel 40 may be opened or closed), wherein in the open condition the communication device is fully operable (see column 4, lines 48-58, which teach that display 30 (which is an opening in housing 20) allows "visible access to display 72 of the portable telephone 70 and/or any actuation/function buttons 74 of the portable telephone 70 if needed"), while in the closed condition the communication device is substantially protected from damage (see column 5, lines 7-13, and Figs. 2, 4 and 6).

Regarding claim 2, which recites "further comprising a first member", the cover panel 40 is the recited "first member".

Regarding claim 3, which recites "wherein when in the closed condition the first member substantially covers and protects a functional face of the device when the device is received in the receptacle", see Figs. 2, 4 and 6.

Regarding claim 4, which recites "wherein the first member is hingedly connected to the receptacle at a first end", see hinge 43 (as shown in Fig. 4) which connects the cover panel 40 (recited "first member") to the receptacle as recited.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faillance.

Regarding claim 39, Faillance teaches a shroud (telephone case 10) for protecting a communication device (portable telephone 70), the shroud comprises a receptacle having an opening to receive the device ("open portion of housing 20", see column 4 lines 12-14), the receptacle being adapted to releasably retain the device therein, the shroud further comprises a first member which is movable with respect to the receptacle to move the shroud between a closed condition and an open condition (cover panel 40, wherein in the open condition the communication device is fully operable (see column 4, lines 48-58, which teach that when the cover panel 40 is open,

the user is allowed “visible access to display 72 of the portable telephone 70 and/or any actuation/function buttons 74 of the portable telephone 70 if needed”), while in the closed condition the communication device is substantially protected from damage (see column 5, lines 7-13, and Figs. 2, 4 and 6), the shroud also incorporates a retaining means comprising a locking projection (closure assembly 55), such that when in the closed condition the locking projection extends at least partially across the opening of the receptacle preventing the communication device from passing through the opening when the shroud is in the closed condition (as shown in Fig. 5, closure assembly 55 extends from front 26 to rear 28 portions of housing 20).

Although Faillance teaches a “locking projection”, the closure assembly 55 is not mounted on the cover panel 40, therefore Faillance does not disclose the “locking projection extending from the first member”, as recited.

As Faillance teaches other devices such as 45, 46 and 47, which may be used to attach the cover panel 40 to the housing 20, it would have been obvious to one of ordinary skill in the art to modify the mounting position of the closure assembly 55 of Faillance to be mounted on the cover panel 40, as a matter of design choice, which would result in the “locking projection extending from the first member”, as recited.

6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faillance in view of U.S. Patent 6,785,566 to Irizarry (hereinafter “Irizarry”).

Regarding claim 39, Faillance teaches a shroud (telephone case 10) for protecting a communication device (portable telephone 70), the shroud comprises a receptacle having an opening to receive the device ("open portion of housing 20", see column 4 lines 12-14), the receptacle being adapted to releasably retain the device therein, the shroud further comprises a first member which is movable with respect to the receptacle to move the shroud between a closed condition and an open condition (cover panel 40, wherein in the open condition the communication device is fully operable (see column 4, lines 48-58, which teach that when the cover panel 40 is open, the user is allowed "visible access to display 72 of the portable telephone 70 and/or any actuation/function buttons 74 of the portable telephone 70 if needed")), while in the closed condition the communication device is substantially protected from damage (see column 5, lines 7-13, and Figs. 2, 4 and 6), the shroud also incorporates a retaining means comprising a locking projection (closure assembly 55), such that when in the closed condition the locking projection extends at least partially across the opening of the receptacle preventing the communication device from passing through the opening when the shroud is in the closed condition (as shown in Fig. 5, closure assembly 55 extends from front 26 to rear 28 portions of housing 20).

Although Faillance teaches a "locking projection", the closure assembly 55 is not mounted on the cover panel 40, therefore Faillance does not disclose the "locking projection extending from the first member", as recited.

In an analogous art, Irizarry teaches a portable phone protective case which includes overhead straps 30 (recited "locking member") which are attached to a

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movable top10T (recited "first member which is movable") as shown in Figs. 1-2, for example. Therefore, as Faillance teaches the desirability to attach the cover panel 40 to the housing 20, it would have been obvious to one of ordinary skill in the art to modify the mounting position of the closure assembly 55 of Faillance to be mounted on a moveable member (such as the top portion 10T of Irizarry), as a matter of design choice, which would result in the "locking projection extending from the first member", as recited.

7. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faillance in view of U.S. Patent 5,697,538 to Goldenberg et al (hereinafter "Goldenberg").

Regarding claim 38, Faillance teaches a shroud (telephone case 10) for protecting a communication device (portable telephone 70), the shroud comprises a receptacle having an opening to receive the device ("open portion of housing 20", see column 4 lines 12-14), the shroud further comprises a first member which is movable with respect to the receptacle to move the shroud between a closed condition and an open condition, wherein in the open condition the communication device is fully operable, while in the closed condition the communication device is substantially protected from damage (cover panel 40, wherein in the open condition the communication device is fully operable (see column 4, lines 48-58, which teach that

when the cover panel 40 is open, the user is allowed "visible access to display 72 of the portable telephone 70 and/or any actuation/function buttons 74 of the portable telephone 70 if needed", and see column 5, lines 7-13, and Figs. 2, 4 and 6, for the closed position).

Faillance does not explicitly teach that "the receptacle incorporates a first retaining means in a rear wall thereof, the first retaining means comprising at least one resiliently flexible locking tab adapted to releasably engage a corresponding locking portion on the communication device to releasably retain the device within the receptacle", as recited.

In an analogous art, Goldenberg teaches a holster for a personal communication device (see Abstract). Goldberg teaches that the back wall 14 of the holster 10 includes a "snap fit feature" locking mechanism 38 (recited "first retaining means") which fits into a depression 46 (recited "corresponding locking portion on the communication device") located on the back surface of PCD 24 (see column 2, lines 49-55).

Therefore as Goldenberg teaches the conventionality of a "retaining means" engaging a "locking portion of a communication device" within a communication device holder, it would have been obvious to one of ordinary skill in the art to modify the protective device of Faillance to incorporate these features, in order to further secure a communication device when in a protective cover, as is conventional.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Kelley whose telephone number is (571) 272-5652. The examiner can normally be reached on Monday-Friday, 9AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SSK/

/Lester Kincaid/
Supervisory Patent Examiner, Art Unit 2617